

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC HEARING
37.78.102, 37.78.103, 37.78.202,	)	ON PROPOSED AMENDMENT
37.78.206, 37.78.207, 37.78.216,	)	
37.78.228, 37.78.425, 37.78.430,	)	
37.78.801, 37.78.806, 37.78.807	)	
pertaining to Temporary Assistance for	)	
Needy Families (TANF)	)	

TO: All Interested Persons

1. On May 30, 2007, at 2:30 p.m., a public hearing will be held in the Wilderness Room, 2401 Colonial Drive, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 21, 2007, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; e-mail dphhslegal@mt.gov.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.78.102 TANF: FEDERAL REGULATIONS ADOPTED BY REFERENCE

(1) remains the same.

(2) The "Montana TANF Cash Assistance Manual" dated ~~January 4~~ July 1, 2007 is adopted and incorporated by this reference. A copy of the Montana TANF Cash Assistance Manual is available for public viewing at each local Office of Public Assistance, and at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., 5th Floor, P.O. Box 202925, Helena, MT 59620-2925. Manual updates are also available on the department's web site at [www.dphhs.mt.gov](http://www.dphhs.mt.gov).

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, MCA

37.78.103 TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF):  
DEFINITIONS The following definitions apply to this chapter:

(1) "Allowable work activities" means all activities defined in federal regulation that are countable toward the calculation of the TANF work participation

rate and used to meet federal participation requirements at 45 CFR 261.30. These activities are contained in the Family Investment Agreement/WoRC Employability Plan (FIA/EP) for individuals who are required to negotiate and comply with a FIA/EP as a condition of eligibility for TANF cash assistance. These allowable work activities are identified in ARM 37.78.807.

(1) through (5) remain the same but are renumbered (2) through (6).

~~(6)~~ (7) "Case management" means the process of formulating and developing and maintaining a Family Investment Agreement/WoRC Employability Plan (FIA/EP) for a participant.

(7) through (16) remain the same but are renumbered (8) through (17).

~~(17) "Employment and training activities" means the activities in the family investment agreement/WoRC employability plan for all participants.~~

(18) through (38) remain the same.

(39) "Participation hours" means the number of hours which a TANF cash assistance participant must perform employment and training allowable work activities as specified in the participant's Family Investment Agreement/WoRC Employability Plan.

(40) remains the same.

(41) "Screening guide" means the tool by which the WoRC case manager in conjunction with the participant determines appropriate employment and training allowable work activities for the participant.

(42) through (44) remain the same.

(45) "Supportive services" means expenses and services necessary for a TANF Cash Assistance participant to participate in training allowable work activities or accept a job.

(46) through (54) remain the same.

(55) "Two-parent household" means a household in which two parents reside, regardless of whether the two parents are parents of the same minor child or two or more different children, except that a household in which two parents reside is considered a single-parent household for employment and training work participation hours if one or both of the parents receives Supplemental Security Income (SSI) benefits or is incapacitated. For purposes of this definition, a biological or adoptive parent or a stepparent is considered a parent.

(56) through (59) remain the same.

(60) "WoRC employability plan" means a negotiated document listing employment and training allowable work activities, and mutual obligations of the WoRC program and the participant regarding the course of action leading to the individual's employment and the number of hours and the time limits within which such activities and obligations shall be performed.

~~(61) "Work activities" means all activities used to meet federal participation requirements at 45 CFR 261.30.~~ "Work-eligible individual" means an individual whose participation in allowable work activities contributes to determining whether the family counts in the calculation of the work participation rate. These individuals include:

(a) all adults receiving assistance;

(b) all minor children receiving assistance who are the head of a household;

(c) all sanctioned individuals who are a natural or biological parent of a minor

child living in the household; and

(d) all nonrecipient or disqualified individuals who are a natural or biological parent of a minor child living in the household unless the nonrecipient or disqualified individual is:

(i) a minor parent who is not the head of a household or the spouse of the head of the household;

(ii) an ineligible alien; or

(iii) a recipient of Supplemental Security Income (SSI) benefits.

(62) and (63) remain the same.

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, MCA

37.78.202 TANF: CASH ASSISTANCE EXEMPTIONS EXTENSIONS TO TIME LIMITS (1) through (4) remain the same.

AUTH: 53-2-201, 53-4-211, 53-4-212, MCA

IMP: 53-4-211, 53-4-212, 53-4-231, 53-4-601, 53-4-607, MCA

37.78.206 TANF: GENERAL ELIGIBILITY REQUIREMENTS (1) Except as provided in (2)(e), an application for TANF Cash Assistance must be made on behalf of a minor child as defined in ARM 37.78.103.

(2) remains the same.

(3) The following are not eligible for TANF cash assistance:

(a) through (g) remain the same.

(h) all members of a family the assistance unit which includes an adult who has received assistance for 60 months or more, as prescribed in ARM 37.78.201;

(i) through (j)(i) remain the same.

~~(k) all members of the assistance unit which includes a specified caretaker relative or minor child who fails or refuses without good cause to negotiate and sign a family investment agreement; or~~ all members of the assistance unit if any member of the assistance unit who is required by ARM 37.78.806 to participate in allowable work activities as defined in ARM 37.78.103 and 37.78.807 fails or refuses without good cause to negotiate and sign a Family Investment Agreement/WoRC Employability Plan (FIA/EP);

~~(l) all members of the assistance unit if any member of the assistance unit who is required by ARM 37.78.806 to participate in employment and training fails or refuses without good cause to negotiate and sign a WoRC employability plan;~~

~~(m) (l) an individual who is sanctioned for noncompliance in employment and training activities~~ allowable work activities as defined in ARM 37.78.103 and 37.78.807 negotiated in the Family Investment Agreement and/or WoRC Employability Plan (FIA/EP) or sanctioned for failure to accept and maintain employment without good cause; and

~~(n) (m) an individual who is serving an intentional program violation as outlined in ARM 37.78.505-; and~~

(n) an individual who is incarcerated and does not meet the temporary absence criteria as outlined in ARM 37.78.207.

(4) through (6)(a)(i) remain the same.

AUTH: 53-2-201, 53-4-212, MCA

IMP: 53-2-201, 53-4-211, 53-4-231, MCA

37.78.207 TANF: LIVING WITH A SPECIFIED RELATIVE (1) through (1)(b) remain the same.

(2) A child may still be considered to be living with a specified relative even though either the child or the caretaker relative is temporarily absent from the home, providing that the temporary absence does not exceed 90 consecutive days and subject to the following conditions:

(a) through (c) remain the same.

(d) The caretaker relative cannot be temporarily absent due to incarceration.

(3) through (6) remain the same.

AUTH: 53-4-212, MCA

IMP: 53-2-201, 53-4-211, 53-4-601, MCA

37.78.216 TANF: TANF CASH ASSISTANCE FIA/WORC EMPLOYABILITY PLAN (FIA/EP) (1) The FIA/WoRC Employability Plan (FIA/EP) is a negotiated document listing eligibility requirements, employment and training activities allowable work activities as defined in ARM 37.78.103 and 37.78.807, and mutual obligations of the state and the participant regarding the course of action leading to the individual's employment and the number of hours and the time limits within which such activities and obligations shall be performed.

~~(a) All participants in the TANF cash assistance programs are required to negotiate and comply with their FIA/WoRC employability plan as a condition of eligibility in the TANF cash assistance program. A participant who is exempt from time limits as specified in ARM 37.78.202 must enter into a FIA/WoRC employability plan. The FIA/WoRC employability plan activities for a participant who is eligible for TANF extended benefits will take into consideration any limitations which are the basis for the extension.~~

(a) The following individuals are required to negotiate and comply with a FIA/EP as a condition of eligibility in the TANF Cash Assistance program:

(i) natural or adoptive adult parents of a minor child in the household;

(ii) nonrecipient or disqualified individuals who are a natural or adoptive parent of a minor child in the household unless the nonrecipient or disqualified individual is:

(A) a minor parent who is not the head of a household or the spouse as a head of the household;

(B) an ineligible alien; or

(C) a recipient of Supplemental Security Income (SSI) benefits.

(iii) adult spouse of a natural or adoptive parent of a minor child in the household;

(iv) adult specified caretaker relative who has requested to be included in the assistance unit;

(v) minor children age 16 or 17 not attending school full-time;

- (vi) teen parents not living independently and not attending school full-time;
- (vii) teen parents who have been approved to live independently; and
- (viii) minor parents.

(b) A participant who is receiving extended benefits as specified in ARM 37.78.202 must enter into a FIA/EP. The FIA/EP activities for a participant who is eligible for TANF extended benefits will take into consideration any limitations which are the basis for the extension.

~~(b) (c)~~ The ~~FIA/WoRC Employability Plan~~ FIA/EP will be reviewed at least once every 12 months by the eligibility case manager and at least monthly by the WoRC case manager. They may also be renegotiated as needed or at the request of either the participant, the eligibility case manager, or the WoRC case manager.

~~(c) (d)~~ Once the ~~FIA/WoRC Employability Plan~~ FIA/EP is completed, it is signed by the participant, the eligibility case manager and the WoRC case manager. The participant receives a signed copy.

~~(d) (e)~~ Failure to perform the activities required in the ~~FIA/WoRC Employability Plan~~ FIA/EP and/or to provide verification and/or documentation of participation in the activities on a timely basis will result in sanctions in accordance with ARM 37.78.506.

(2) Because entering into a ~~FIA/WoRC Employability Plan~~ FIA/EP is a condition of eligibility for TANF Cash Assistance, failure or refusal without good cause to enter into a ~~FIA/WoRC Employability Plan~~ FIA/EP initially or to renegotiate and/or sign a new ~~FIA/WoRC Employability Plan~~ FIA/EP when requested will result in the denial of or termination of assistance for the entire assistance unit.

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, 53-4-606, 53-4-608, MCA

37.78.228 TANF: TANF CASH ASSISTANCE; INITIAL PAYMENT AND REDETERMINATION OF ELIGIBILITY (1) The initial assistance payment will be issued in a prorated amount which includes the day upon which application was made and the remaining days of that month: if the following criteria are met:

(a) the assistance unit does not include an individual as defined in ARM 37.78.216 who is required to negotiate and comply with a FIA/EP as a condition of eligibility;

(b) the assistance unit includes an individual(s) as defined in ARM 37.78.216 who is required to negotiate and comply with a FIA/EP and the negotiation of the FIA/EP indicates the required individual(s) has been referred to a Tribal NEW program for case management; or

(c) the assistance unit includes an individual(s) as defined in ARM 37.78.216 who is required to negotiate and comply with a FIA/EP as a condition of eligibility, the individual(s) has been referred to the WoRC program for case management and the individual(s) has negotiated a WoRC Employability Plan within three working days from being referred to the WoRC program or has good cause as outlined in ARM 37.78.508 for failing to negotiate a WoRC employability plan within three working days of referral.

(2) The initial assistance payment will be issued in a prorated amount which includes the day upon which the individual(s) negotiated a WoRC Employability Plan

and the remaining days of the month if the individual(s) who is required to negotiate and comply with a FIA/EP as defined in ARM 37.78.216 and who has been referred to the WoRC program for case management does not negotiate a WoRC Employability Plan within three working days from being referred to the WoRC program and does not have a good cause as defined in ARM 37.78.508 for failing to negotiate a WoRC Employability Plan within three working days of referral.

(3) If the assistance unit contains more than one individual who is required to negotiate and comply with a FIA/EP as defined in ARM 37.78.216, the initial assistance payment will be prorated based on the latter of the application date or the date that all required individuals have negotiated the FIA/EP.

(2) remains the same but is renumbered (4).

AUTH: 53-2-201, 53-4-212, MCA

IMP: 53-2-201, 53-4-211, MCA

37.78.425 TANF: NONFINANCIAL ASSISTANCE PAYMENT (1) A PES payment may be provided to assist a family with emergency needs related to maintaining employment of training needs necessary to advance in employment provided the family meets all financial and nonfinancial eligibility requirements set forth in ARM 37.78.206(4) through (6), 37.78.207(6), and 37.78.420(5) and (6). Issuance of a PES payment is dependent on available funding in the family's county of residence. The payment may be made at the department's discretion for a variety of employment related expenses, including:

(a) transportation, including vehicle repairs, tires, insurance, driver's license fee, gas, etc.;

(b) clothing, such as uniforms and other specialized clothing and footwear or other employment required apparel;

(c) tools and equipment;

(d) union dues, special fees, licenses, or certificates; or

(e) relocation expenses to permit a participant to accept verified employment in another county or state.

(2) A PES payment may not be used to pay for:

(a) any medical service or item; or

(b) fines of any type, including traffic or criminal.

(3) A PES payment will be provided only if:

(a) all other resources have been exhausted including but not limited to the family's personal resources;

(b) the department may require verification of expenses for which the payment is requested; and

(c) one cost estimate for major expenses.

(4) Payments cannot duplicate funds available through supportive services provided by other agencies or programs.

(5) Payments will be made to the individual or to the vendor.

(6) The maximum amount of the payment will be the amount necessary to alleviate the emergency, up to but not in excess of \$1,000 per family per year.

(7) A PETE payment may be provided to assist a family with necessary expenses, while the parent is attending a training or education program necessary to

advance in employment and is directly intended to promote improved wages. Issuance of a PETE payment is dependent on available funding in the family's county of residence. A PETE payment is \$494 per month per household, without regard to the number of parents approved for PETE. The payment may be made at the department's discretion.

~~(8) To be eligible a household must meet all financial and nonfinancial eligibility requirements as stated in ARM 37.78.206(4) through (6), 37.78.207(6) and 37.78.420(5) and (6). The parent applying for PETE must also meet the following eligibility criteria:~~

~~(a) must be working an average of 10 hours per week in paid employment;~~  
~~(b) must have worked at least 30 hours per week for 10 or more of the 16 weeks preceding application for a PETE or enrollment in the current semester/quarter or training program;~~

~~(c) must not currently receive TANF cash assistance for themselves or any member of the filing unit;~~

~~(d) must have received TANF cash assistance sometime in the two years prior to application for PETE; and~~

~~(e) must pass a local community screening by submitting the following documentation:~~

~~(i) level of training or education being sought may not extend beyond a bachelor's level;~~

~~(ii) proof of acceptance to or enrollment in a training program or educational institution;~~

~~(iii) a written plan detailing career advancement goal and training/course/class schedule to ensure program completion by June 30, 2003 and if the program extends beyond June 30, 2003, the plan must include an explanation of how the parent will complete the program once PETE assistance ends; and~~

~~(iv) proof of current paid employment.~~

~~(9) Once a parent is approved for PETE the parent will continue to be eligible as long as the parent has an eligible minor child in the home and the parent verifies monthly that:~~

~~(a) the parent is following the PETE career advancement plan; and~~

~~(b) the parent continues to work an average of 10 hours per week.~~

~~(10) (1) A work support payment may be provided to a TANF cash assistance household to assist with employment related needs, the month following the month of case closure. Issuance of a work support payment is dependent on available funding. A work support payment is equal to the TANF cash assistance benefit standard for a household of three as defined in ARM 37.78.420. A work support payment is limited to the amount of \$375.~~

~~(11) (2) An assistance unit is eligible to receive a work support payment when:~~

~~(a) the assistance unit is losing TANF cash assistance eligibility due to new or increased earnings from employment and the new or increased earned income was:~~

~~(i) reported within ten calendar days of the participant's knowledge of the change; and~~

~~(ii) verified within ten calendar days from the request for verification; and~~

(b) remains the same.

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, 53-4-603, MCA

37.78.430 TANF: UNDERPAYMENTS AND OVERPAYMENTS (1) and (2) remain the same.

(3) Recovery of TANF cash assistance shall be made as follows:

(a) and (b) remain the same.

(c) The department is entitled to recover an overpayment regardless of whether any or all of the members of the overpaid assistance unit are currently receiving assistance.

(i) In the case of an individual or assistance unit currently receiving assistance, the department may recover an overpayment by reducing the current cash assistance amount by 10% or \$10 whichever is higher, and retaining the sum by which the cash assistance has been reduced to repay the overpayment. At the department's option, recovery may also be made by voluntary payments by a member of the overpaid assistance unit or any other legal means available to collect a debt, including the use of offset against any monies which the state of Montana owes or may owe to a member of the filing unit.

(ii) In the case of an individual or assistance unit currently receiving assistance, and the overpayment is due to the receipt of continued benefits pending a fair hearing regarding a sanction, which was ruled in favor of the department, the department may recover an overpayment by reducing the current cash assistance amount by 25% or \$25 whichever is higher, and retaining the sum by which the cash assistance has been reduced to repay the overpayment. At the department's option, recovery may also be made by voluntary payments by a member of the overpaid assistance unit or any other legal means available to collect a debt, including the use of offset against any monies which the state of Montana owes or may owe to a member of the filing unit.

~~(ii)~~ (iii) In the case of individuals who are not currently receiving assistance, recovery may be made by voluntary payments by a member of the overpaid assistance unit or any other legal means available to collect a debt, including the use of offset against any monies which the state of Montana owes or may owe to a member of the filing unit.

(4) and (4)(a) remain the same.

AUTH: 53-2-201, 53-4-212, MCA

IMP: 53-2-108, 53-2-201, 53-4-211, MCA

37.78.801 TANF CASH ASSISTANCE EMPLOYMENT AND TRAINING:  
PURPOSE (1) These rules govern TANF cash assistance employment and training for persons who are recipients of participants in the TANF Cash Assistance program and/or required to negotiate and comply with a FIA/WoRC Employability Plan (FIA/EP) as a condition of eligibility in the TANF Cash Assistance programs as defined in ARM 37.78.216.



AUTH: 53-4-212, MCA

IMP: 53-2-201, 53-4-211, 53-4-601, 53-4-613, MCA

37.78.806 TANF CASH ASSISTANCE EMPLOYMENT AND TRAINING: PARTICIPATION (1) ~~A person who is eligible for the TANF cash assistance program is~~ All participants in the TANF Cash Assistance program who are required to negotiate and comply with their FIA/WoRC Employability Plan (FIA/EP) as outlined in ARM 37.78.216 are required to participate in employment and training allowable work activities as defined in ARM 37.78.103 and 37.78.807 and as provided in these rules. All adults, minor parents, teen parents, and minor children 16 or 17 who are not attending school or an equivalency program full-time The above-named individuals must participate in employment and training allowable work activities as indicated in the FIA/WoRC Employability Plan FIA/EP if they are referred to the WoRC program for case management, or as indicated in their tribal NEW plan if they are referred to the tribal NEW program for case management.

(2) ~~Some TANF employment and training allowable work~~ activities may differ from community to community based on available resources. Participants may be placed in any activities available in their community.

(3) remains the same.

AUTH: 53-4-212, MCA

IMP: 53-2-201, 53-4-211, 53-4-601, 53-4-613, MCA

37.78.807 TANF CASH ASSISTANCE EMPLOYMENT AND TRAINING ALLOWABLE WORK ACTIVITIES (1) Participants in TANF Cash Assistance, regardless of whether they are members of a single-parent or two-parent family, may, in accordance with their WoRC Employability Plan, subject to availability in their community, participate in the following allowable work activities:

(a) through (2) remain the same.

AUTH: 53-4-212, MCA

IMP: 53-2-201, 53-4-211, 53-4-601, 53-4-613, MCA

### 3. ARM 37.78.102

ARM 37.78.102 currently adopts and incorporates by reference the TANF policy manual effective January 1, 2007. The department proposes to make some revisions to this manual that will take effect on July 1, 2007, based in part on the TANF Reauthorization regulations contained in the Deficit Reduction Act of 2005, P.L. 109-171 (hereinafter, "TANF Reauthorization"). The proposed amendments to ARM 37.78.102 are necessary in order to incorporate into the Administrative Rules of Montana the revised versions of the policy manuals and to permit all interested parties to comment on the department's policies and to offer suggested changes. It is estimated that changes to the TANF manual could affect approximately 8,437 TANF recipients. Manuals and draft manual material are available for review in each local Office of Public Assistance and on the department's web site at [www.dphhs.mt.gov](http://www.dphhs.mt.gov).

### ARM 37.78.103

This ARM has been updated to reflect definitions in the TANF Reauthorizations regulations of "allowable work activities" as activities which count toward the calculation of the work participation rate, and "work-eligible" individuals as individuals whose verified participation in allowable work activities is used when calculating the work participation rate.

### ARM 37.78.202

This ARM has been updated to reflect more accurately that households may receive an extension to the time limit, not an exemption as the current title to the ARM erroneously refers. The only change in this ARM is in the title.

### ARM 37.78.206

This ARM has been updated to reflect a decision of the department that individuals who are incarcerated will no longer be eligible for assistance. Previously, incarcerated individuals who were to be absent for a period less than 90 days were considered temporarily absent but nevertheless eligible for continued TANF benefits.

The TANF Reauthorization regulations are very specific in requiring work activity and verification of work activity, as well as in defining allowable work activity and the type of verification and documentation regarding participation in work activities. Individuals who are incarcerated are not able to participate in allowable work activities and are unable to provide verification and documentation of work activities. Allowing these individuals to continue to receive TANF cash assistance would decrease the work participation rate. The department does not feel it can justify the negative impact to the work participation rate by allowing incarcerated individuals to continue to receive TANF cash assistance.

This change will apply to an average of approximately 2310 TANF participants who currently are mandated to participate in work activities although it will impact fewer than 50 that are incarcerated in any given month. There will be no additional cost to the state unless a penalty is imposed for failure to meet the work participation rate.

Other changes were made to the rule so as not to change its substance but to render its language more uniform and consistent.

### ARM 37.78.207

This ARM has been updated to reflect a decision of the department that incarceration is no longer an allowable reason for a specified caretaker relative to be considered temporarily absent from the household but nevertheless eligible for continued TANF benefits.

The TANF Reauthorization regulations are very specific in requiring work activity and verification of work activity, as well as in defining allowable work activity and the type of verification and documentation regarding participation in work activities. Individuals who are incarcerated are not able to participate in allowable work activities and are unable to provide verification and documentation of work activities. Allowing these individuals to continue to receive TANF cash assistance would decrease the work participation rate. The department does not feel it can justify the negative impact to the work participation rate by allowing incarcerated individuals to continue to receive TANF cash assistance.

This change will apply to an average of approximately 2310 TANF participants who currently are mandated to participate in work activities although it will impact fewer than 50 that are incarcerated in any given month. There will be no additional cost to the state unless a penalty is imposed for failure to meet the work participation rate.

#### ARM 37.78.216

This ARM has been updated to outline more specifically individuals who are required to negotiate and comply with a Family Investment Agreement/WoRC Employability Plan (FIA/EP) in order to be eligible for TANF cash assistance. The TANF Reauthorization outlined those individuals who are considered "work-eligible" individuals and whose verified and documented participation in work activities is used in calculating the work participation rate for the state. As well, state policy requires other individuals who may not be considered a "work-eligible" individual to participate in work activities as a requirement for cash assistance.

The ARM has also been updated to specify that pursuant to TANF Reauthorization, a sanction will result not only from a failure to perform the activities required in the FIA/WoRC Employability Plan, but also from a failure to provide timely verification and documentation of participation in such activities.

#### ARM 37.78.228

This ARM has been updated to reflect a decision of the department that the initial assistance payment will be prorated from the date of application if the household does not include individuals who are required to negotiate a FIA/EP, the individuals who are required to negotiate a FIA/EP are being referred to the Tribal NEW program for case management services, or the individuals who are required to negotiate a FIA/EP and who are being referred to the WoRC program for case management services have negotiated a FIA/EP within three days of referral to the WoRC program or have good cause for failing to negotiate the FIA/EP within three days of referral. The initial assistance payment will be prorated from the date of negotiation of the FIA/EP with the WoRC program if the individuals who are required to negotiate a FIA/EP and have been referred to the WoRC program for case management services have not negotiated the FIA/EP within three days of referral and do not have good cause for failing to negotiate the FIA/EP within three days of referral.

TANF Reauthorization regulations contain strict definitions of allowable work activities as well as criteria for verification and documentation of such work activities. TANF Reauthorization limits those activities states may claim as allowable work activities for purposes of meeting the work participation rate mandated by the Administration for Children and Families. Failure to meet this work participation rate will result in monetary penalties to the state. As well, work activities that cannot be verified and documented cannot be used as an allowable work activity for purposes of meeting the work participation rate. The changes in the rule prompt participants to engage in allowable work activities in order to meet the mandated work participation rate and avoid monetary penalties for failing to meet the work participation rate.

This change will impact an average of approximately 2310 TANF participants who currently are mandated to participate in work activities. There will be no additional cost to the state unless a penalty is imposed for failure to meet the work participation rate.

#### ARM 37.78.425

This ARM has been updated to remove information on the Post Employment Services (PES) and Post Employment Training and Education (PETS) payments as those payments are no longer available due to lack of funding. The ARM was updated to clarify existing policy that indicates in order to be eligible for a work support payment the household must be losing cash assistance due to new or increased earnings from employment and the new or increased income was reported within ten days of the participant's knowledge of the change and verified within ten days from request for verification, if appropriate. The ARM was also updated to reflect that the work support payment is limited to a specific amount of \$375.00, not subject to fluctuation.

#### ARM 37.78.430

This ARM has been updated to reflect that individuals who request a fair hearing to dispute a sanction and who receive an overpayment when they continue to receive benefits pending the fair hearing at which the department prevails, are subject to recovery of the overpayment by reduction of their cash assistance grant by 25% or \$25 whichever is higher, as opposed to the current policy which allows for reduction of their cash assistance grant by 10% or \$10 whichever is higher.

Individuals sanctioned for noncompliance with work activities may request a fair hearing and receive continued benefits during the fair hearing process. With the issuance of continued benefits, such individuals are not required to participate in work activities pending the fair hearing; however, they continue to count as a work-eligible individual and therefore have a negative impact on the work participation rate.

If these individuals subsequently lose the fair hearing, the department establishes an overpayment for the full amount of the TANF grant that was issued as a continued benefit. This overpayment amount is subject to all the long term collection practices currently in place. The department feels that increasing the rate at which overpayments can be recovered will reduce the incentive for individuals to request a fair hearing solely for the purpose of retaining cash assistance and having a negative impact on the work participation rate; thus saving the state from potential monetary penalties. As well, such individuals may have less of an incentive to incur a debt to the department that may impact their future financial benefits, i.e., garnishment from or recoupment from income tax offsets.

This change will impact an average of approximately 2310 TANF participants. There will be no additional cost to the state unless a penalty is imposed for failure to meet the work participation rate based on nonparticipation of those individuals who are required to participate in work activities during the fair hearing process.

#### ARM 37.78.801

This ARM is being updated to clarify that currently TANF Cash Assistance employment and training purpose/rules govern participants who are required to negotiate and comply with a FIA/EP as a condition of eligibility for TANF Cash Assistance. This is a clarification only.

#### ARM 37.78.806

This ARM is being updated to clarify current department policies that all participants who are required to negotiate and comply with a Family Investment Agreement/WoRC Employability Plan are required to participate in allowable work activities. A reference to ARM 37.78.216 was added as that ARM specifies the individuals who are required to negotiate and comply with a Family Investment Agreement/WoRC Employability Plan. The ARM is being updated to reflect the change to the wording and concept of "allowable work activities" pursuant to TANF Reauthorization.

No controversy is anticipated over this change as this is current policy and a clarification.

#### ARM 37.78.807

This ARM is being updated to reflect the replacement of "Employment and Training Activities" with "Allowable Work Activities" pursuant to TANF Reauthorization. This reflects changes made to ARM 37.78.103.

No controversy is anticipated over this change as it is a clarification.

Following is a brief overview of the TANF manual sections with substantive changes related to the above ARM changes.

### TANF 302-1

#### Residence/Home/Temporary Absence

TANF 302-1 is being updated to reflect that individuals who are incarcerated are no longer considered temporarily absent from the home, even if the incarceration is expected to last less than 90 days.

### TANF 103-5

#### Processing

TANF 103-5 is being updated to reflect the changes to the proration of benefits. The pro-ration will be based on whether or not the assistance unit includes individuals who are required to negotiate and comply with a Family Investment Agreement/WoRC Employability Plan (FIA/EP).

Assistance units with no individuals required to negotiate a FIA/EP or with individuals who are required to negotiate a FIA/EP but who are being referred to Tribal NEW for case management services will have their cash assistance benefits pro-rated to the date of application.

Assistance units with individuals who are required to negotiate a FIA/EP who are being referred to WoRC for case management services will have their benefits prorated to the date of application if they have negotiated their FIA/EP within three days of referral to WoRC or have good cause for failing to negotiate the FIA/EP within three days of referral. Otherwise the benefits will be prorated to the date they negotiate the FIA/EP with WoRC. If the assistance unit contains more than one individual who is required to negotiate a FIA/EP and the individuals have been referred to WoRC for case management services, the benefits will be prorated based on the latter of the application date or the date that all required individuals have negotiated the FIA/EP with WoRC.

### TANF 1504-1

#### Overpayments

TANF 1504-1 is being updated to reflect the change to the overpayment process when the overpayment is due to receipt of continued benefits pending a fair hearing regarding a sanction which was ruled in favor of the department. These individuals are subject to recovery of the overpayment by reduction of their cash assistance grant by 25% or \$25 whichever is higher.

4. The department intends that the amendments to ARM 37.78.102, 37.78.103, 37.78.202, 37.78.206, 37.78.207, 37.78.216, 37.78.228, 37.78.425, 37.78.430, 37.78.801, 37.78.806, 37.78.807 be applied retroactively to January 1,

2007. No detrimental effects are anticipated as a result.

5. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on June 7, 2007. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

/s/ Francis X. Clinch  
Rule Reviewer

/s/ Russell Cater for  
Director, Public Health and  
Human Services

Certified to the Secretary of State April 30, 2007.